

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Appeal of the Invasive
Species/Infested Waters Civil Citation Issued to
Michael Wayne LaBine

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

Citation No 133481

This matter came before Administrative Law Judge James E. LaFave on August 17, 2012, for a telephone Pre-Hearing Conference and evidentiary hearing.

Michael Wayne LaBine, the licensee and motorist, appeared on his own behalf and without counsel. No one appeared on behalf of the Minnesota Department of Natural Resources (Department). The hearing record closed at the end of the telephone hearing on August 17, 2012.

STATEMENT OF THE ISSUE

1. Whether Mr. LaBine transported his boat on a public roadway without first removing or opening the boat's drain plug, in violation of Minn. Stat. § 84D.10, subdivision 4?

Because no one appeared on behalf of the Department at the Pre-Hearing Conference and evidentiary hearing, the hearing record does not contain substantive evidence that Mr. LaBine violated 84D.10. Accordingly, the Administrative Law Judge recommends that the Commissioner DISMISS the citation.

FINDINGS OF FACT

1. On July 4, 2012, Mr. LaBine was issued Citation 133481 by Conservation Officer Shawn Wichmann. The citation asserted violation of Minn. Stat. 84D.10, subdivision 4.¹

2. Mr. LaBine timely appealed the citation.²

¹ Citation 133481.

² *Id.*

3. On July 26, 2012, a Notice of Pre-Hearing Conference and Notice of Hearing was mailed to the home addresses of the licensee-motorist and to Conservation Officers Shawn Wichmann and Jayson Hansen.³

4. The Notice of Prehearing Conference and Notice of Hearing stated that a Pre-Hearing Conference and evidentiary hearing would be held in this matter on August 17, 2012, by way of telephone conference call.⁴

5. The Notice Prehearing Conference and Notice of Hearing states, in part, that the “decision in this case will be based only on factual information or evidence that is part of the hearing record.”⁵

6. No one appeared at the August 17, 2012, conference on behalf of the Department. No request was made for a continuance, nor was any communication received by the undersigned from the Department in advance of the Pre-Hearing Conference.⁶

Based upon these Findings, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Natural Resources have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 84D.13, subd. 8 and 116.072, subd. 6.

2. The Department has the burden of proof to establish that Mr. LaBine violated Minn. Stat. § 84D.10.⁷

3. Having offered no evidence in support of its claim, the Department did not establish that Mr. LaBine violated Minn. Stat. § 84D.10.

4. Dismissal of the Citation is the appropriate result.⁸

³ See, Affidavit of Nancy J. Hansen (July 26, 2012).

⁴ Notice of Prehearing Conference and Notice of Hearing.

⁵ *Id.*

⁶ Conservation Officer Wichmann did call the Office of Administrative Hearing on August 17, 2012, after the close of the hearing. Officer Wichmann acknowledged missing the hearing and asked what to do. Officer Wichmann was informed he and Conservation Officer Hansen should write the Administrative Law Judge a letter, explain what happened and to request a re-hearing. To-date neither the Office of Administrative Hearings nor the Administrative Law Judge have received a letter from either Officer Wichmann or Officer Hansen.

⁷ Minn. R. 1400.7300, subp. 5 (“The party proposing that certain action be taken must prove the facts at issue by a preponderance of the evidence, unless the substantive law provides a different burden or standard”).

⁸ See, Department’s Final Order, *In the Matter of Charpentier*, OAH Docket No. 8-2000-22275-2 (June 18, 2012) (Department Citation No. 118480) and Department’s Final Order, *In the Matter of Grubba*, OAH Docket No. 8-2000-22844-2 (August 13, 2012) (Department Citation No. 127741).

Based upon the Findings of Fact and Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge respectfully recommends that the Commissioner of Natural Resources DISMISS Citation 133481.

Dated: August 30, 2012

s/James E. LaFave

JAMES E. LAFAVE

Administrative Law Judge

Reported: Digitally recorded.

NOTICE

Pursuant to Minn. Stat. § 116.072, subd. 6 (e), the Commissioner may not issue a final order until at least five days after receipt of the report of the Administrative Law Judge. The persons to whom the order is issued may, within those five days, comment to the Commissioner and the Commissioner will consider the comments. The final order of the Commissioner may be appealed pursuant to Minn. Stat. §§ 14.63 - 14.69.